

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|--------------------------------|---|-----------------------|
| RAYMOND L. BRUTON, |) | |
| |) | |
| Plaintiff, |) | C.A. No.: 06-736- SLR |
| |) | |
| v. |) | |
| |) | |
| DIRECTOR JAY SYLVESTER, et al. |) | TRIAL BY JURY |
| |) | OF SIX DEMANDED |
| Defendant. |) | |

**DEFENDANT JAY SYLVESTER’S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION
TO DISMISS PLAINTIFF’S COMPLAINT PURSUANT TO F.R.C.P. 12(b)(6)**

Defendant, Jay Sylvester, requests Plaintiff’s Complaint be dismissed, as a matter of law, and in support thereof, avers as follows:

I. BRIEF PROCEDURAL HISTORY

Pro Se inmate Plaintiff, Raymond L. Bruton, filed a complaint against several defendants, including Moving Defendant Jay Sylvester, on December 4, 2006, alleging purported violations of his civil rights during his incarceration at the Howard K. Young Correctional Institution. On December 14, 2006, this Court entered an Order permitting Plaintiff to proceed In Forma Pauperis.

Thereafter, on April 11, 2007, this Court, following a review of Plaintiff’s Complaint dismissed all claims against all defendants, except for Moving Defendant, Jay Sylvester. See, Complaint, a copy of which is attached hereto marked Exhibit “A”.

Plaintiff appears to claim violations of his Eighth Amendment Rights and purported violations of his Fourteenth Amendment Rights. See, Complaint as Exhibit “A”.

II. BRIEF FACTUAL HISTORY

Plaintiff was incarcerated at the Howard R. Young Correctional Center. On August 30, 2005, Plaintiff signed a contract to follow the rules and regulations of the Key Program. (Complaint, Statement of Facts at ¶1). Plaintiff claims he had a history of high blood pressure and takes medication for the condition, along with diabetes medication, two times a day. (Complaint, Statement of Facts at ¶2).

Plaintiff claims he was not permitted to go outside, and as a result, his ‘health suffered’. (Complaint, Statement of Facts at ¶3). Plaintiff left the Key Program on July 8, 2006. (Complaint, Statement of Facts at ¶3).

Plaintiff made complaints and wrote grievances. (Complaint, Statement of Facts at ¶4). Plaintiff claims he should have had one hour recreation due to his chronic medical condition. (Complaint, Statement of Facts at ¶4). Plaintiff also claims the dorms were without air or sunshine. (Complaint, Statement of Facts at ¶5).

As a result of the eleven (11) months in the Key Program, his medicine was increased because of the lack of exercise, and, he suffered weight gain, which is “not good for a chronic patient”. (Complaint, Statement of Facts at ¶6).

As set forth by Plaintiff, Moving Defendant, Jay Sylvester, the Director of the Key Program, explained that the Department of Corrections controlled the daily exercise which the residents were permitted to have. (Complaint, Statement of Facts at ¶7).

Attached to the Complaint were exhibits which included a Memorandum from Sgt. Moody, of the Department of Corrections, advising that the grievance regarding outside recreation was already grieved by Plaintiff or another inmate. (See, Memorandum of Sgt. Moody).

Plaintiff claims he exhausted his administrative remedies by talking “to my Counselors in the Key Program, wrote grievance to Sgt. Moody.” Complaint, ¶ II.C.1. Plaintiff claims that ‘nothing was done by anyone’. Complaint, ¶ II.C.2.

III. **LEGAL ANALYSIS**

A. Legal Standard

In determining whether a motion to dismiss should be granted, a district court must accept as true, “all factual allegations in the Complaint and all reasonable inferences that can be drawn from them.” Ransom v. Marrazzo, 848 F.2d 398, 401 (3rd Cir. 1988). The court should grant the motion to dismiss if, “no relief could be granted under any set of facts which could be proved.” Id. (Citing D.P.

Enterprises v. Bucks County Community College, 725 F.2d 943, 944 (3rd Cir. 1984)). Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law. Thomas v. Ford Motor Company, 70 F.Supp.2d 521 (E.D. 1999) (citing Neitzke v. Williams, 490 U.S. 319, 326-327 (1989)).

The purpose of a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is to test the sufficiency of a complaint, not to resolve disputed facts or decide the merits of the case. Kost v. Kozakiewicz, 1 F.3d 183 (3d Cir. 1993). In particular, the Court looks to “whether sufficient facts are pleaded to determine that the complaint is not frivolous, and to provide defendants with adequate notice to frame an answer.” Colburn v. Upper Darby Township, 838 F.2d 663, 666 (3rd Cir. 1988). However, the Court need not “credit a complaint’s ‘bald assertions’ or ‘legal conclusions’ when deciding a motion to dismiss.” Morse v. Lower Merion School District, 132 F.3d 902, 906 (3rd Cir. 1997).

Defendant Sylvester asserts that Plaintiff’s Complaint, taking the allegations as true for purposes of this motion, without admitting the same, fail to state a claim upon which relief may be granted and therefore, Plaintiff’s claims should be dismissed as a matter of law.

B. Plaintiff Failed to Exhaust His Administrative Remedies As Required By The Prison Litigation Reform Act

Pursuant to the Prison Litigation Reform Act, prisoners must exhaust “such administrative remedies as are available” before bringing actions “with respect to their prison conditions.” 42 U.S.C. § 1997e(d)(2). In an opinion authored by Justice Ginsburg, the United States Supreme Court held that this exhaustion requirement applies to all inmate suits seeking redress for prison circumstances or occurrences, whether the suits involved general circumstances or particular episodes, and whether the suits alleged excessive force, actual physical prison conditions, or some other alleged wrongdoing. Correction Officer Porter, et. al. v. Nussle, 534 U.S. 516 (2002). The exhaustion requirement is mandatory. Id. Moreover, *exhaustion* of administrative remedies means completing all available appeals, even if prison officials do not respond. See Davis v. Warman, et. al., 49 Fed. Appx. 365, 366 (3d Cir. 2002); Brown v. Morgan, F.3d 595, 596 (6th Cir. 2000).

Taking the facts as alleged by Plaintiff as true, for purposes of this motion only, without admitting the same, Plaintiff claims that he ‘talked’ to his counselors in the Key Program and wrote grievances to Sgt. Moody. He claims that ‘nothing was done’ as a result. Pursuant to the Memorandum of Sgt. Moody, of the Department of Corrections, the plaintiff or another inmate already filed another grievance addressing the lack of exercise.

The only supporting facts as they relate to Key Program, of which Mr. Sylvester was Director, was that he ‘spoke’ with some of his counselors. There are no allegations that Mr. Bruton pursued any administrative remedies regarding the Key Program or Mr. Sylvester. (Compare with his written grievance to Sgt. Moody). Additionally, even assuming that talking to the counselors was part of an administrative remedy, Mr. Bruton fails to allege that any decisions were rendered, or, any appeals were made.

Therefore, there are no facts alleged supporting that Mr. Bruton pursued or exhausted his administrative remedies.

Therefore, based upon the facts alleged in the Complaint, Plaintiff failed to pursue and exhaust his administrative remedies. Without having exhausted his remedies, including appeals, his claims must be dismissed, as a matter of law. See, Davis, supra.

C. Plaintiff’s Claims for Eighth Amendment Violations Should be Dismissed as a Matter of Law.

Plaintiff’s claims for purported violations of his Eighth Amendment rights appear to stem from both his conditions of confinement relating to the inability to perform outdoor exercise, and, an alleged deliberate indifference to his medical needs. For the reasons set forth below, both claims fail, as a matter of law.

1. Plaintiff’s Claim Relating to Exercise Fail as a Matter of law

Plaintiff sets forth claims of alleged unhealthy environment relating to the inability to participate in outdoor exercise. While this alleged prohibition may have been unacceptable to Plaintiff, they do not

rise to the level of a constitutional violation for cruel and unusual punishment pursuant to the Eighth Amendment.

When determining whether conditions of confinement constitute cruel and unusual punishment, courts consider whether the conditions “involve the wanton and unnecessary infliction of pain [or are] grossly disproportionate to the severity of the crime warranting imprisonment.” Rhodes v. Chapman, 452 U.S. 337, 347 (1981). However, “[t]he Constitution ...does not mandate comfortable prisons...and only those depriving the minimal civilized measure of life’s necessities...are sufficiently grave to form the basis of and Eighth Amendment violation.” Wilson v. Seiter, 501 U.S. 294, 298 (1991)(quoting Rhodes, 452 U.S. at 347-349).

In Seiter, the Supreme Court clarified that to establish that prison conditions amount to cruel and unusual “punishment,” a plaintiff must satisfy a two part test: (1) an objective component, considering whether the conditions were sufficiently serious to amount to a violation of the Eighth Amendment; and (2) a subjective component, considering whether the prison officials acted with “deliberate indifference” when imposing or failing to remedy such conditions. See Seiter 501 U.S. at 298, 303.

A deprivation of exercise may amount to a constitutional violation – but, the analysis depend heavily on the length of confinement, the period of deprivation, and the likelihood of harm. Sweet v. South Carolina Dept. of Corrections, 529 F.2d 854 (4th Cir. 1975).

Here, plaintiff claims the inability to participate in outdoor exercise. He claims that between August 30, 2005 and May 26, 2006, he was only permitted to go to the exercise yard 7-8 times, and, was permitted to go to the gym no more than 10 times.

Furthermore, according to Plaintiff’s factual claims, taken as true, pursuant to Defendant Sylvester, the daily exercise was provided by the Department of Corrections, and not through the authority of Mr. Sylvester. See, Complaint as Exhibit “A”.

Plaintiff’s claims relating to a lack of exercise fail for two reasons. First, as affirmatively alleged by Plaintiff, the exercise regiment was controlled by a person/entity other than Moving

Defendant, Mr. Sylvester.

Second, Plaintiff was incarcerated in the Key Program for approximately 8 months. Utilizing the factors set forth in Sweet, Plaintiff's allegations fail to meet a meritorious claim for a deprivation due to lack of exercise. Not only was the period of deprivation minimal, he alleged several occasions where he was permitted to exercise outdoors and use the gym. Furthermore, the likelihood of harm for any alleged deprivation was minimal. Plaintiff indicated weight gain and changes in medications as a result.

Because Plaintiff has not alleged sufficient facts to sustain a violation of his rights for a purported failure to permit exercise, these claims must be dismissed, as a matter of law.

2. Deliberate Indifference to Medical Needs Claims Fail

In order for Plaintiff to recover for a claim of deliberate indifference to medical needs, he must prove an act or omission sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend "evolving standards of decency" in violation of the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285, 292, 150 L.Ed2d 251 (1976). More recently, the Supreme Court has addressed the standards to prove a claim of medical indifference. See, Farmer v. Brennan, 511 U.S. 825, 114 S.Ct. 285, 128 L.Ed.2d 811 (1994). The Supreme Court, in Farmer, adopted a subjective standard, rather than an objective standard, to determine deliberate indifference. In order for an official to be found liable pursuant to the Eighth Amendment, it must be proven that the official "knows of and disregards an excessive risk to inmate safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer at U.S. 837, S.Ct. at 1979.

Furthermore, Plaintiff must also establish that the deprivation was sufficiently serious. See, Nami v. Fauver, 82 F.3d 63 (3rd Cir.1996).

A review of Plaintiff's allegations, taken as true for purposes of this motion only, reveal that he had a history of high blood pressure and diabetes for which he was required to take medication. There are no allegations that he was *not* permitted to take his medications. Rather, he alleges that the lack of

exercise lead to an increase in medication and weight gain. These two elements do not constitute a deliberate indifference to serious medical needs of plaintiff. If anything, Defendants provided medical care, as circumstantially, if he increased his medicine, those needs were being monitored and acted upon.

Accordingly, Plaintiff's claims for Eighth Amendment violations for deliberate indifference to medical needs must be dismissed, as a matter of law.

WHEREFORE, Plaintiff's claims for purported Eighth Amendment violations must be dismissed as a matter of law.

D. Plaintiff's Claims for Fourteenth Amendment Violations Should be Dismissed as a Matter of Law.

Plaintiff also sets forth claims pursuant the Fourteenth Amendment. Generally, these are for either a procedural due process violation or a substantive due process violation. Taking the facts of the allegations as true, Plaintiff fails to state a claim for either a procedural or substantive due process violation.

1. Procedural Due Process Claims Fail

In order to state a cause of action for procedural due process, Plaintiff must show that he was deprived of a protected interest, and that there were not adequate procedures in place to challenge such deprivation. Taylor Investments Limited v. Upper Darby Township, 983 F.2d 1285, 1293 (3rd Cir. 1993). As set forth above, Plaintiff had adequate procedures in place, and pursuant to the Prison Reform Act, is required to exhaust those administrative remedies before bringing the instant action. As he has failed to do so, he has not utilized the processes available to him and is therefore unable to set forth a meritorious claim for procedural due process violations.

2. Substantive Due Process Claims Fail

In order for plaintiff to establish a substantive due process violation, he must show that the Defendant Sylvester deliberately deprived him of a right or an interest by an "arbitrary or capricious act." See, Taylor Investments, supra. at 1290. "A violation of a substantive due process right is proved (1) if the government's actions were not rationally related to a legitimate government interest, or (2) if the

government's actions in a particular case were in fact motivated by bias, bad faith or improper motive..."

Parkway Garage, Inc. v. City of Philadelphia, 5 F3d 685, 692 (3rd Cir. 1993), citing Midnight Sessions Limited v. City of Philadelphia, 945 F.2d 667, 683 (3rd Cir. 1991). Cert. denied, 112 S.Ct. 1668 (1992).

Assuming the facts as alleged by Plaintiff to be true, without admitting the same, the claims are insufficient to support a substantive due process claim against Defendant Sylvester. The only allegation referring to Mr. Sylvester, as director of the Key Program, is that he advised Plaintiff that exercise was controlled by the Department of Corrections. There are no allegations that the Mr. Sylvester's actions were arbitrary and capricious or motivated by bias or bad faith.

WHEREFORE, Plaintiff's claim for Fourteenth Amended violations must be dismissed, as a matter of law.

E. Plaintiff's Claims Against Mr. Sylvester Must be Dismissed, as a Matter of Law.

A review of Plaintiff's Complaint fails to set forth a specific theory as against Mr. Sylvester. Interpreting the Pro Se Plaintiff's Complaint, he could be asserting a claim for personal involvement or on the basis of Mr. Sylvester's supervisory capacity.

Because Plaintiff alleged Mr. Sylvester was the Director of the Key Program, Defendants will interpret the claims as one against Mr. Sylvester in his supervisory capacity. In this regard, supervisory liability can not be established in a §1983 matter on a theory of *Respondeat Superior*. Monell v. Dept. of Soc. Serv. Of City of New York, 436 U.S. 658 (1978); Andrews v. City of Philadelphia, 895 F.2d 1469 (3rd Cir. 1990). In Andrews, the Third Circuit explained two ways in which public entity policy or custom can be established. First, the alleged conduct must demonstrate a "decision maker possessing final authority to establish municipal policy with respect to the action." Andrews at 1480. Second, custom or policy can be shown through proof that a public entity or one of its high officials "...[approved] a subordinate's decision or the basis for it." Andrews at 1481 citing City of St. Louis v. Praprotniak, 485 U.S. 112, 127 (1976).

In the instant matter, there are no allegations to support a claim against Mr. Sylvester in his supervisory capacity. The only allegations relating to his decision making or authority, relate to the fact that the Department of Corrections are responsible for the exercise routines. There are no allegations that Mr. Sylvester, as director of the Key Program was the moving force behind any purported constitutional violation or that his actions constituted a deliberate indifference to plaintiff's needs.

Accordingly, all claims against Mr. Sylvester arising out of his supervisory capacity, should be dismissed, as a matter of law.

IV. **CONCLUSION**

For all of the foregoing reasons, Defendant's Motion to Dismiss should be granted, as a matter of law, and, all claims against Jay Sylvester should be dismissed, with prejudice.

Reger Rizzo Kavulich & Darnall LLP

By: /s/ Rochelle Libid Gumapac
Rochelle Libid Gumapac, Esquire
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1001 Jefferson Street
Wilmington, DE 19801
(302) 652-3611 (phone)
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rgumapac@rrkdllaw.com
Attorneys for Defendant,
Jay Sylvester

Dated: June 15, 2007

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

| | | |
|--------------------------------|---|-----------------------|
| RAYMOND L. BRUTON, |) | |
| |) | |
| Plaintiff, |) | C.A. No.: 06-736- SLR |
| |) | |
| v. |) | |
| |) | |
| DIRECTOR JAY SYLVESTER, et al. |) | TRIAL BY JURY |
| |) | OF SIX DEMANDED |
| Defendant. |) | |

ORDER

AND NOW, this ____ day of _____, 2007, upon consideration of Defendant Jay Sylvester's Memorandum of Law in Support of his Motion to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(b)(6) and Plaintiff's response thereto, if any, it is hereby ORDERED and DECREED that said Motion is GRANTED and Plaintiff's Complaint is dismissed, with prejudice.

By The Court:

J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|--------------------------------|---|-----------------------|
| RAYMOND L. BRUTON, |) | |
| |) | |
| Plaintiff, |) | C.A. No.: 06-736- SLR |
| |) | |
| v. |) | |
| |) | |
| DIRECTOR JAY SYLVESTER, et al. |) | TRIAL BY JURY |
| |) | OF SIX DEMANDED |
| Defendant. |) | |

CERTIFICATE OF SERVICE

I, Rochelle Gumapac, Esquire hereby certify that on the 15th day of June 2007 a true and correct copy of Defendant Jay Sylvester's Memorandum of Law in Support of his Motion to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(b)(6) was electronically filed and served via first class mail, postage prepaid, upon:

Raymond L. Bruton
SBI #069025
Unit 2-Q-21
H.R.Y.C.I.
PO Box 9561
Wilmington, DE 19809

Reger Rizzo Kavulich & Darnall LLP

By: /s/ Rochelle Libid Gumapac
Rochelle Libid Gumapac, Esquire
Bar I.D. No. 4866
Suite 202
1001 Jefferson Street
Wilmington, DE 19801
(302) 652-3611 (phone)
(302) 652-3620 (fax)
rgumapac@rrkdllaw.com
Attorneys for Defendant
Jay Sylvester

EXHIBIT "A"

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(Rev. 5/05)

**FORM TO BE USED BY A PRISONER IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. §1983**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

(1) Raymond L. Bruton, SBI#069025
(Name of Plaintiff) (Inmate Number)

H.R.Y.C.I., P.O. Box 9561, WILM. DE
(Complete Address with zip code)

(2) _____
(Name of Plaintiff) (Inmate Number)

06-736

(Case Number)

(to be assigned by U.S. District Court)

(Complete Address with zip code)

(Each named party must be listed, and all names
must be printed or typed. Use additional sheets if needed)

vs.

CIVIL COMPLAINT

(1) Russel D. Buskirk

(2) CivGenics

(3) CSM Medical Division
(Names of Defendants)

☒ Jury Trial Requested
X

(Each named party must be listed, and all names
must be printed or typed. Use additional sheets if needed)

DEC 04 2006

I. PREVIOUS LAWSUITS

- A. If you have filed any other lawsuits in federal court while a prisoner, please list the caption and case number including year, as well as the name of the judicial officer to whom it was assigned: R6

Civ. NO 00ev-01032, JJF, 2000, December

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Addictional Defendants

Director Jay Sylvester
CiviGenics Key Program (N)
H.R.Y.C.I.
PO Box 9561
Wilmington, DE 19809

Warden Raphael Williams
H.R.Y.C.I., POBox 9561
Wilmington, DE 19809

Mr. Stanely W. Taylor Jr.
Commissioner of Prison
245 Mckee Road
Dover, DE 19904

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II. EXHAUSTION OF ADMINISTRATIVE REMEDIES

In order to proceed in federal court, you must fully exhaust any available administrative remedies as to each ground on which you request action.

- A. Is there a prisoner grievance procedure available at your present institution? ☒ Yes ☐ No
- B. Have you fully exhausted your available administrative remedies regarding each of your present claims? ☒ Yes ☐ No
- C. If your answer to "B" is Yes:
1. What steps did you take? I talk to my Counselors in the Key Program, wrote Grievances to Sgt. Moody,
 2. What was the result? Nothing was done by anyone:
- D. If your answer to "B" is No, explain why not: _____

III. DEFENDANTS (in order listed on the caption)

- (1) Name of first defendant: Russel D. Buskirk
 Employed as CSMigenics- DE State Office
 Mailing address with zip code: 300 Water Street, Dover DE, 19904
- (2) Name of second defendant: James Inciadi,
 Employed as CSM Medical Division at University of Delaware
 Mailing address with zip code: H.R.Y.C.I., P.O. Box 9561, Wilm. DE
19809
- (3) Name of third defendant: Warden Rapael Williams
 Employed as Warden at H.R.Y.C.I., P.O. Box 95
 Mailing address with zip code: 61, Wilmington, DE 19809

(List any additional defendants, their employment, and addresses with zip codes, on extra sheets if necessary)

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IV. STATEMENT OF CLAIM

(State as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach no more than three extra sheets of paper if necessary.)

1. SEE Attach Statement of Facts:

2. SEE Attached Statement of Facts:

3. SEE Attached Statement of Facts:

V. RELIEF

(State briefly exactly what you want the Court to do for you. Make no legal arguments. Cite no cases or statutes.)

1. Plaintiff respectfully request of the Court to be compensated and request
punitive damages against the defendants for their willful
violation of Plaintiff rights to have exercise and the right
right to breathe fresh air which denied Petitioners his
14 Amendment and under his Eight Amendment created cruel

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Key North Correctional Recovery Program Residents Weekly Schedule

| Day/Time | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday | Sunday |
|----------------------|----------------------------|------------------------------------|-----------------------------------|-----------------------------------|---|---|-----------------------|
| 0600 | Lights ON | Lights ON | Lights ON | Lights ON | Lights ON | Lights ON | Lights ON |
| 0630 | Breakfast | Breakfast | Breakfast | Breakfast | Breakfast | Breakfast | Breakfast |
| 0700 | Count | Count | Count | Count | Count | Count | Count |
| 0740 | Shower & Shave | Shower & Shave | Shower & Shave | Shower & Shave | Shower & Shave | Shower & Shave | Shower & Shave |
| 0800 | Count | Count | Count | Count | Count | Count | Count |
| 0830 | Education | Education | Education | Education | Education | | |
| 0830 - 0900 | Inspection | Inspection | Inspection | Inspection | Inspection | AM Meeting | AM Meeting |
| | AM Meeting | House I - Community Meeting | AM Meeting | House II - Community Meeting | AM Meeting | | |
| 0900-1100 Session I | House I & II Committees | House II All Phases Peer Awareness | House I All Phases Peer Awareness | House I & II All Phases | All Phases Recreation Recovery Activities Committee | House I & II Phase I only Seminar | Individual Counseling |
| | Testing for Phase Movement | House I Commissary | House II Commissary | | | | |
| 1130 | Count | Count | Count | Count | Count | Count | Count |
| 1200 | Lunch | Lunch | Lunch | Lunch | Lunch | Lunch | Lunch |
| 1300-1430 Session II | House I & II All Phases | House II All Phases Self Discovery | House I & II All Phases | House I All Phases Self Discovery | House I & II All Phases Learn to Deal | House I & II Phase I only Intro to 12 Steps | Recovery Activities |
| | | | | | | | Journaling |
| 1500 & 1600 | Count | Count | Count | Count | Count | Count | Count |
| 1615 | Dinner | Dinner | Dinner | Dinner | Dinner | Dinner | Dinner |
| 1700-1730 | Committee Meeting | Individual Counseling | Committee Meeting | Individual Counseling | Committee Meeting | Individual Counseling | Individual Counseling |
| 1730-1830 | Individual Counseling | House I & II AA/NA | House I & II AA/NA | House I & II Phase III - RePac | House II only AA/NA | House I only AA/NA | House I & II AA/NA |
| 1800-1930 | | | | | House I Recreation | House II Recreation | |
| 2000-2030 | PM Meeting | PM Meeting | PM Meeting | PM Meeting | PM Meeting | PM Meeting | PM Meeting |
| 2300 | Lights OFF | Lights OFF | Lights OFF | Lights OFF | Lights OFF | Lights OFF | Lights OFF |

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2. and unusual punishment by not affording Petitioner his
right to breath good clean air and exercise,
3. And finally, defendants denied Plaintiff in the Key Program
North, of life, liberty or property, without due process
of law, and denied Plaintiff within its jurisdiction the
equal protection of the law.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 20 day of November, 2006.

Raymond L. Braton

(Signature of Plaintiff 1)

(Signature of Plaintiff 2)

(Signature of Plaintiff 3)

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STATEMENT OF FACTS

On August 30, 2005, Petitioner sign a contract to follow the rules and regulation of the Key(n) Program, upon Petitioners daily schedule, no rules of recreation were included in the normal routine of morning and afternoon classes that we as residents faithfully had to attend.

Petitioner has a history of chronic High Blood Pressure. Petitioner take High Blood pressure medicine daily. Petitioner has also been diagnose for diabetes# 2 and Petitioner takes diabetes medicine twice a day.

Because Petitioner was not allowed outside for fresh air on a daily basis nor allowed to go to the gym for exercise on a daily basis, petitioner's health suffered. Petitioner graduated the Key Program (N). Petitioner was in the Key (N) Program from August 30 2005, until May 26, 2006. Petitioner actually left the Key (N) Program on July 8, 2006. During that entire period, Petitioner was allowed to go to the exercise yard around (7) to (8) times in the Key(N) Program. Furthermore, Petitioner was allowed to the Gym no more than 10 times during his stay in the Key(N) Program.

Petitioner complain to everyone, Petitioner wrote grievances and petition the Key(N) Program's staff. However, no body would allow the Key Residents to exercise outside in the exercise yard or go to the gym on a normal day to day, 1 hour recreation schedule as petitioner should have had because of Petitioners chronic sickness. Exercise is an important part of Chronic illness, 1/2 half hour of walking a day, the doctors orders, Petitioner to do. The only walking Petitioner was allowed to do was walking to the groups in the Key arena and back to Petitioners bunk in the Dorm# 1 an Dorm# 1 area, when Petitioner was moved for their own personal reason.

The Dorm# 1 and Dorm# 2 were totally without any air from the outside. The windows were closed up no one could get a good direct view from outside and no sunshine what so ever. We were not allowed to have a radio and the TV we had was taken so often, you got use to not viewing a TV at all.

The eleven months Petitioner was living in the Key(N) Dorm#1 and Dorm#2 were eleven of the worst months in Petitioner's life. Petitioners medicine was increased because of the lack of exercise. Petitioners body suffered with weight gain which is not good for a chronic patient to have because of the lack of exercise.

The Key(N) Program Director blame DOC for the lack of exercise provided to the Dorm#1 and Dorm#2, Director Jay Sylvester explain

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that DOC controlled the daily exercise which the residents were allow to have; And we had to live with it on the conditions. Never fully understanding whether DOC was at fault for the none commitment to exercise or was it the civil Genics Program for their lack of care in providing leadership which would have concern itself with the Key(N) problem of no exercise outside or in the Gym during the period of August 30, 2005, to July 8, 2006.



Raymond L. Bruton
SBI# 069025 Unit 2-Q-21
H.R.Y.C.I., POBox 9561
Wilmington, DE 19809

Date: November 28 , 2006

_____ This complaint is addressed in the Inmate Handbook. Refer to the handbook page _____ for clarification and/or direction.

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- ___ Action request is inappropriate or not completed. Inmate must make an actual request, such as, request that an investigation be conducted (inmates are not forwarded results of investigations that involve staff conduct).
- ___ Documentation must be attached to the grievance when it is resubmitted that supports allegations/complaint, such as commissary receipts, Form 537, etc. The IGC will make copies of items submitted with the grievance and return the originals to the inmate.
- ___ This complaint should be addressed by submitting a sick call slip. If you are experiencing any type medical condition, please submit a sick call slip.
- ___ Other: Requests are not processed through the grievance procedure.
- ___ Other: Please be advised that you have submitted your grievance on the wrong form. Please re-submit using the correct grievance form.

cc: file